

§ 301.6511(g)-1

26 CFR Ch. I (4-1-03 Edition)

Example 1. In 1972, D, an individual taxpayer who was a disqualified person under the provisions of section 4946(a)(1), participated in an act of self-dealing with a private foundation and incurred a tax under section 4941(a)(1). The private foundation files a Form 990-PF on May 15, 1973, and discloses thereon that it has engaged in an act of self-dealing with D. D files a Form 4720 on July 2, 1973, and pays the amount of tax imposed by section 4941(a) with respect to such act of self-dealing. For purposes of this section, the return was filed on May 15, 1973, and any claim for credit or refund by D must be filed by May 17, 1976 (May 15, 1976, was a Saturday).

Example 2. Assume the same facts as in example 1 except that D filed a Form 4720 on July 1, 1974, and pays the tax on that date. D must then file any claim for credit or refund by July 1, 1976.

[T.D. 7838, 47 FR 44252, Oct. 7, 1982]

§ 301.6511(g)-1 Special rule for partnership items of federally registered partnerships.

(a) *In general.* In the case of any tax imposed by subtitle A with respect to any person, the period for filing a claim for credit or refund of any overpayment attributable to any partnership item of a federally registered partnership shall not expire before the later of—

(1) The date which is 4 years after the date prescribed by law (including extensions thereof) for filing the partnership return for the partnership taxable year in which the item arose, or

(2) If the taxpayer or a general partner or a person authorized to act on behalf of the partnership, as provided in § 301.6501(o)-2(d), consents to extend the period for assessing a deficiency attributable to the partnership item before the date specified in paragraph (a)(1) of this section, the date 6 months after the expiration of the extension.

(b) *Limits on amount of credit or refund not applicable.* In the case of a claim for credit or refund of any income tax overpayment attributable to any partnership item of a federally registered partnership, the limitations provided in section 6511(b) (2) and (c) shall not apply if the claim is filed within the period described in paragraph (a) of this section.

(c) *Special periods of limitation with respect to carryback of net operating loss, capital loss, etc.* The provisions of sec-

tion 6511(g) must also be taken into account in applying the various special periods of limitation prescribed in section 6511(d). Thus, to the extent that a carryback is attributable to a partnership item of a federally registered partnership, the period for filing a claim for credit or refund of an overpayment attributable to that carryback shall not expire before the date determined under paragraph (a) of this section with respect to the partnership taxable year in which the item arose.

(d) *Definitions.* For purposes of this section, the terms “partnership item” and “federally registered partnership” have the same meaning as such terms have when used in section 6501(o), § 301.6501(o)-2(c), and § 301.6501(o)-3.

(e) *Effective date.* The provisions of this section are effective generally for partnership items arising in partnership taxable years beginning after December 31, 1978 and before September 4, 1982. This section shall not apply, however, to any partnership taxable year with respect to which the amendments made to Code section 6511(g) by section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 are effective. See section 407(a)(3) of that Act.

(Sec. 6501(o) (as it read before the enactment of the Tax Equity and Fiscal Responsibility Act of 1982) and 7805 of the Internal Revenue Code of 1954 (92 Stat. 2818, 26 U.S.C. 6501(o); 68A Stat. 917, 26 U.S.C. 7805))

[T.D. 7884, 48 FR 16244, Apr. 15, 1983]

§ 301.6512-1 Limitations in case of petition to Tax Court.

(a) *Effect of petition to Tax Court—(1) General rule.* If a person having a right to file a petition with the Tax Court with respect to a deficiency in income, estate, gift, or excise tax imposed by subtitle A or B, or chapter 41, 42, 43, or 44 of the Code has filed such petition within the time prescribed in section 6213(a), no credit or refund of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which a district director or director of a service center (or a regional director of appeals) has

determined the deficiency, shall be allowed or made, and no suit in any court for the recovery of any part of such tax shall be instituted by the taxpayer, except as to items set forth in paragraph (a)(2) of this section.

(2) *Exceptions.* The exceptions to the rule stated in subparagraph (1) of this paragraph (a), are as follows:

(i) An overpayment determined by a decision of the Tax Court which has become final;

(ii) Any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(iii) Any amount collected after the expiration of the period of limitation upon levying or beginning a proceeding in court for collection.

(b) *Overpayment determined by Tax Court.* If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of income tax for the same taxable year, of gift tax for the same calendar year or calendar quarter, of estate tax in respect of the taxable estate of the same decedent, or of tax imposed by chapter 41, 42, 43, or 44 with respect to any act (or failure to act) to which such petition relates, in respect of which a district director, or director of a service center (or a regional director of appeals) has determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of such tax, the overpayment determined by the Tax Court shall be credited or refunded to the taxpayer when the decision of the Tax Court has become final. (See section 7481, relating to the date when a Tax Court decision becomes final.) No such credit or refund shall be allowed or made of any portion of the tax unless the Tax Court determines as part of its decision that such portion was paid—

(1) After the mailing of the notice of deficiency, or

(2) Within the period which would be applicable under section 6511(b)(2), (c), (d) or (g) (see §§ 301.6511(b)-1, 301.6511(c)-1, 301.6511(d)-1, 301.6511(d)-2, and 301.6511(d)-3), if on the date of the mailing of the notice of deficiency a claim had been filed (whether or not filed) stating the grounds upon which the

Tax Court finds that there is an overpayment.

(c) *Jeopardy assessments.* In the case of a jeopardy assessment made under section 6861(a), if the amount which should have been assessed as determined by a decision of the Tax Court which has become final is less than the amount already collected, the excess payment shall be credited or refunded subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section.

(d) *Disallowance of deficiency by reviewing court.* If the amount of the deficiency determined by the Tax Court (in a case where collection has not been stayed by the filing of a bond) is disallowed in whole or in part by the reviewing court, then the overpayment resulting from such disallowance shall be credited or refunded without the making of claim therefor, subject to a determination being made by the Tax Court with respect to the time of payment as stated in paragraph (b) of this section. (See section 7481, relating to date Tax Court decision becomes final.)

(e) *Collection in excess of amount determined by Tax Court.* Where the amount collected is in excess of the amount computed in accordance with the decision of the Tax Court which has become final, the excess payment shall be credited or refunded within the period of limitation provided in section 6511.

(f) *Collection after expiration of statutory period.* Where an amount is collected after the statutory period of limitation upon the beginning of levy or a proceeding in court for collection has expired (see section 6502, relating to collection after assessment), the taxpayer may file a claim for refund of the amount so collected within the period of limitation provided in section 6511. In any such case, the decision of the Tax Court as to whether the statutory period upon collection of the tax expired before notice of the deficiency was mailed shall, when the decision becomes final, be conclusive.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7838, 47 FR 44252, Oct. 7, 1982]